

April 8, 2003

Exemption No. 8023  
Regulatory Docket No. FAA-2003-14820

Mr. Bruce H. Rabinovitz  
Attorney for Dutch Caribbean Airline N.V.  
Wilmer Cutler and Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037-1420

Dear Mr. Rabinovitz:

By letter dated March 27, 2003, you petitioned the Federal Aviation Administration (FAA) on behalf of Dutch Caribbean Airline N.V., (DCA) for an exemption from § 129.28 of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would permit DCA to operate three MD 80 aircraft after April 9, 2003 without meeting the requirements of Section 129.28 (c). We note that you request exemption until June 9, 2003.

The FAA recently issued a denial of exemption in circumstances similar in all material respects to those presented in your petition. In Denial of Exemption No. 8018 (copy enclosed), the FAA found that a grant of exemption was not in the public interest and could adversely affect safety. The FAA stated that on September 11, 2001, the United States experienced terrorist attacks when aircraft were commandeered and used as weapons. The FAA also stated that these actions demonstrated the need to improve flightdeck security.

The FAA stated that on November 19, 2001, the U.S. Congress enacted Public Law No. 107-71, the Aviation and Transportation Security Act (the Act). The FAA noted that section 104(a)(1)(B) of the Act directs the Administrator to issue an order that requires strengthening of the flightdeck door and locks on any aircraft that operates in air transportation and that has a rigid door in the bulkhead between the flightdeck and passenger area. The FAA added that such strengthening would ensure that the flightdeck door cannot be forced open from the passenger compartment. The FAA stated that as required by the Act, it issued Amendment No. 121-288 on January 15, 2002.

As discussed in the preamble to Amendment No. 121-288, the FAA expected that foreign air carriers conducting service to and from the United States under part 129 would have flightdeck security measures commensurate with those of U.S. carriers. With part 121

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flightdeck security improved, the FAA was concerned that part 129 operations would be more attractive targets for terrorist actions if security was not similarly improved. Amendment No. 121-288 solicited comments on this issue and clearly stated that the FAA intended to have consistent flightdeck door security requirements for parts 121 and 129. The FAA received no comments objecting to the stated intention to adopt consistent standards.

On June 21, 2002, the FAA issued Amendment No. 129-33 which requires that foreign air carriers operating under part 129 install reinforced doors that provide intrusion and ballistic penetration resistance (67FR 42450, June 21, 2002). Part 129 was amended with the objective of ensuring that foreign operators have consistent flight deck security with those operating under Part 121.

On December 30, 2002 Amendment No. 129-36 was issued to clarify the FAA's intent with respect to applicability of the reinforced door requirements to certain types of aircraft and foreign air carrier operations. Amendment No. 129-36 was issued after reviewing several issues raised at a public hearing held on July 30, 2002, and comments received as a result of the June 21 final rule. Amendment No. 129-36 applies to transport category airplanes originally type certificated with 20 or more passenger seats and certain transport category cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, operated within the U.S. except for overflights. Additionally, it requires that operators adopt operational changes restricting access to the flightdeck in flight.

The FAA has discussed its intent to have consistent flightdeck door security requirements for parts 121 and 129 at numerous international settings. The FAA finds that it is unacceptable to create two levels of flightdeck protection for the same operations to and from U.S. airports. It would be irresponsible to expose passengers, and those on the ground, to greater risks based solely upon the country of registration of the aircraft. To meet this goal of corresponding protection, it is essential that the standards be imposed at the same time. If the requirements do not have a synchronized compliance time, the security risk will be shifted to the unprotected aircraft. Unsynchronized implementation of the security measures should not create a more attractive target for terrorists.

The FAA finds that April 9, 2003, is a firm date. Foreign air carriers were aware of the requirement for U.S. carriers for 18 months and for part 129 operations since June 21, 2002. Security considerations overshadow the burden on individual operators who have reasons to request an exemption.

The FAA stated, in the enclosed exemption, that it has fully considered the difficulties and delays that have hindered the petitioner from bringing its aircraft into compliance with the rule. The FAA added that it is aware these delays could be beyond the petitioner's control. However, the FAA found that these problems are not the basis upon which to grant an

exemption. Safety and security require that these improvements be installed in each aircraft. The FAA found that the petitioner has failed to show how its proposed exemption would be in the public interest or would provide a level of safety equal to that provided by the rule.

Having reviewed your reasons for requesting an exemption, I find that they do not differ materially from those presented by the petitioner in the enclosed denial of exemption. In addition, I have determined that the reasons stated by the FAA for denying the enclosed exemption also apply to the situation you present. Accordingly, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, the petition of Dutch Caribbean Airline, for an exemption from 14 CFR § 129.28 (c) is hereby denied.

Please note that in an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the Department of Transportation's online Docket Management System (DMS) at <http://dms.dot.gov>. This new docket system enables interested persons to submit requests to, view requests on, and download requests from the DMS to comply with 14 CFR § 11.63. Please submit future requests through the DMS.

Sincerely,

/s/

Louis C. Cusimano  
Acting Director, Flight Standards Service

Enclosure